



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: State Board of Health

☐ Permanent Rule
☒ Emergency Rule

Effective date of rule:

Permanent Rules

☐ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: 1) Requires Department review of available records to reascertain the names (replace coded identifiers with names) of previously reported asymptomatic HIV cases. 2) Allows Department to maintain those cases in a named-based surveillance system, to comply with Centers for Disease Control and Prevention's HIV reporting requirements. 3) Requires local health jurisdiction's to assist Department in reascertaining names. Names must be destroyed at local level within 3 days of reporting the names to the Department.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 246-101, Sections 520 and 635, Special Conditions--AIDS and HIV

Suspended:

Statutory authority for adoption: RCW 70.24.125

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Centers for Disease Control and Prevention (CDC) has clearly communicated that only HIV case data reported through a name based system will be accepted. Washington currently uses a name to code system and HIV case reports are not included in the national database. In Fiscal Year 2007, Federal Ryan White CARE Act funding will be calculated on the proportion of states' HIV cases. WAC 246-101- 520 and 635 must be revised to enable DOH to reascertain HIV case data to the CDC by the June 30, 2006 deadline and maintain HIV/ AIDS care funding.

Date adopted: March 8, 2006

NAME (TYPE OR PRINT)

Craig McLaughlin

SIGNATURE

TITLE

Executive Director

CODE REVISER USE ONLY

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	<u>2</u>	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>2</u>	Repealed	_____

WAC 246-101-520 Special conditions--AIDS and HIV. (1) The local health officer and local health department personnel shall maintain individual case reports for AIDS and HIV as confidential records consistent with the requirements of this section. The local health officer and local health department personnel shall:

(a) Use identifying information on HIV-infected individuals only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; or

(iv) As specified in WAC 246-100-072; or

(v) To provide case reports that contain identifying information to the state health department.

(b) Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within three months of receiving a complete case report.

(c) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

(d) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; or

(ii) Authorized by written patient consent.

(2) Local health department personnel are authorized to use HIV identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

(d) Investigations pursuant to RCW 70.24.022 or 70.24.024.

(3) Public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) Local health officials will report asymptomatic HIV infection cases to the state health department (~~((according to a standard code developed by the state health department))~~).

(5) Local health officers shall require and maintain signed confidentiality agreements with all health department employees with

access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(6) Local health officers shall investigate potential breaches of the confidentiality of HIV identifying information by health department employees. All breaches of confidentiality shall be reported to the state health officer or their designee for review and appropriate action.

(7) Local health officers and local health department personnel shall:

(a) Assist the state health department to reascertain (replace coded identifiers with names) the identities of previously reported cases of asymptomatic HIV infection;

(b) Within three days of obtaining the identities, report the identities of such previously reported cases to the state health department; and

(c) Destroy the identifying information upon report to the state health department.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-635 Special conditions--AIDS and HIV. The following provisions apply for the use of AIDS and HIV notifiable conditions case reports and data:

(1) Department personnel shall not disclose identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; or

(b) Authorized by written patient consent.

(2) Department personnel are authorized to use HIV identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services; and

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department.

(3) For the purposes of this chapter, public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) The state health officer shall require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. These agreements will be renewed at least

annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(5) The state health officer shall investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or their authorized representative for review and appropriate action.

(6) The department shall maintain all HIV case reports in a name-based surveillance system solely for the purpose of complying with HIV reporting requirements from the federal Centers for Disease Control and Prevention.

(7) Authorized representatives of the department shall review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

(8) When providing technical assistance to a local health department, authorized representatives of the department may temporarily and subject to the time limitations in WAC ((~~246-101-525(2)~~)) 246-101-520 receive the names of reportable cases of asymptomatic HIV infection for the purpose of ((~~HIV surveillance,~~)) partner notification, or special studies. Upon completion of the activities by representatives of the state health department, named information will be((÷

(~~a~~)) provided to the local health department subject to the provisions of WAC ((~~246-101-525(2)~~); and

(~~b~~) ~~Converted to code and maintained as code only until the person is diagnosed with AIDS~~) 246-101-520.

((~~7~~)) (9) Within twelve months of the effective date of the HIV infection notification system (by September 1, 2000), established in this chapter, the state health officer, in cooperation with local health officers, will report to the board on:

(a) The ability of the reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;

(b) The cost of the reporting system for state and local health departments;

(c) The reporting system's effect on disease control activities; and

(d) The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection.